

**ST 99-7**

**Tax Type: SALES TAX**

**Issue: Organizational Exemption From Use Tax (Charitable)**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**“MARGARITAVILLE COMMUNITY  
DEVELOPMENT CORP.”,  
APPLICANT**

**v.**

**ILLINOIS DEPARTMENT  
OF REVENUE**

**No: 97-ST-0000**

**Sales Tax Exemption**

**Robert C. Rymek  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. John Alshuler for the Illinois Department of Revenue and Mr. Dennis Norden for the applicant.

**SYNOPSIS:** The “Margaritaville Community Development Corporation” (hereinafter the “applicant”) requested that the Illinois Department of Revenue (hereinafter the “Department”) issue it a sales tax exemption identification number. On August 14, 19xx, the Department denied the applicant’s application. The applicant protested the Department’s denial and requested a hearing.

The sole issue to be determined at the hearing was whether the applicant qualifies for an exemption identification number as “a corporation, society, association, foundation or institution organized and operated exclusively for charitable \*\*\* purposes[.]” 35 ILCS 105/3-5(4). Following a careful review of all the evidence presented at the hearing, I recommend that the Department’s tentative denial of exemption be reversed.

## **FINDINGS OF FACT**

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department's August 14, 1997, Tentative Denial of Exemption. Dept. Gr. Ex. No. 1, Doc. A.
2. The applicant was incorporated on April 4, 19xx under the General Not for Profit Corporation Act. Dept. Gr. Ex. No. 1., Doc. F, p. 12.
3. The applicant's articles of incorporation provide, *inter alia*, that the applicant was organized: (1) "[t]o combat community deterioration, poverty, racial discrimination and prejudice"; (2) "[t]o reduce neighborhood tension"; (3) "[t]o relieve the poor, distressed and underprivileged of the City of "Margaritaville"; (4) "[t]o combat community deterioration"; (5) "[t]o conduct activities to achieve charitable and educational objectives within the City of "Margaritaville", including residential rehabilitation and commercial area revitalization, development of health, social service and recreational facilities, and providing other social services and counseling"; (6) "[t]o raise the economic and educational levels of the underprivileged residents of the City of "Margaritaville"; and (7) "[t]o lessen the burdens of government." Dept. Gr. Ex. No. 1., Doc. F, p. 15.
4. The applicant's articles of incorporation and bylaws have no provisions relating to stock or shareholders. Dept. Gr. Ex. No. 1, Doc. F, pp. 12-21.
5. The applicant's bylaws do not contain any provisions relating to membership fees. Dept. Gr. Ex. No. 1, Doc. F, p. 15-20.
6. The applicant's bylaws set forth that the applicant's directors "shall serve without compensation for their services." Dept. Gr. Ex. No. 1, Doc. E, p. 55.

7. The Internal Revenue Service granted the applicant an exemption from federal income taxes on May 2, 19xx pursuant to section 501(c)(3) of the Internal Revenue Code. Dept. Ex. No. 1, Doc. E, pp. 5-7.
8. Applicant derives 73% of its revenues from public and private donations, 14% from rental income, 11% from investment income, and 2% from other miscellaneous sources. App. Ex. No. 2, p. 5.
9. The “Margaritaville Development Corporation” (hereinafter the “MDC”) is a not-for-profit corporation which is a separate and distinct entity from the applicant. Dept. Ex. No. 1, Doc. E, p. 59.
10. The “MDC” owns the “Community Resource Center” which is leased to the applicant. Dept. Ex. No. 1, Doc. E, p. 59.
11. “MDC” and the applicant allow the community resource center to be used by other groups including Narcotics Anonymous, and the “Margaritaville” Park District. Those who can afford a donation make one, while groups such as Narcotics Anonymous are not charged. Tr. p. 13.
12. The applicant’s primary activities consist of offering two programs: the “Get Up and Out” Development program (hereinafter the “GUOD program”) and a youth program. App. Ex. No. 2, pp. 9.
13. The “GUOD” program “[p]rovides entrepreneurial and job readiness training in support of national welfare-to-work programs.” App. Ex. No. 2, p. 9. The program was implemented in response to high unemployment rate resulting from factory closings. The program consists of employment training classes and has served over 500 people. Tr. p. 11.

14. The youth program “[p]rovides an after-school program and various other activities for area at-risk youth.” App. Ex. No. 2, p. 9. The program provides “a safe haven and an alternative to being on the streets” and was started in response to “youth in the street” violence. The program has served over 2,000 youth between the ages of 6 and 16 years old. Dept. Gr. Ex. No. 1, Doc. E, p. 19; Tr. p. 11.
15. The applicant generally provides its programs free of charge. Dept Gr. Ex. No. 1, Doc. E, p. 17; App. Ex. No. 3.
16. The applicant’s primary expense is for salaries totaling \$67,253. Of those salary expenses, \$35,014 is apportioned to the “GUOD” program, \$23,841 to the youth program, and \$8,398 to general and administrative salaries. App. Ex. No. 2, p. 6.
17. The applicant’s highest paid employee receives a salary of under \$40,000 per year. Tr. p. 13.
18. In addition to salaried employees, the applicant also relies on volunteer workers. Tr. p. 13.

### **CONCLUSIONS OF LAW**

An examination of the record establishes that this applicant has demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant the granting of a sales tax exemption number. Under the reasoning given below, the determination by the Department denying the applicant a sales tax exemption number should be reversed. In support thereof, I make the following conclusions:

Based upon the opening statements of counsel<sup>1</sup>, and the fact that only extremely limited testimony was offered, it appears that the parties were in agreement that the

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<sup>1</sup> During cursory opening statements, the parties briefly set forth their positions with the Department stating, “at least up to this point, the evidence provided by the taxpayer has been insufficient to establish that it is organized exclusively for charitable purposes.”

outcome of this case hinged on whether documentation the applicant provided to the Department adequately established that the applicant qualified for exemption. The bulk of this documentation was entered into the record by the Department as part of Department Gr. Ex. No. 1.<sup>2</sup> Although the relevance of these documents could have been set forth with more specificity (see generally Obert v. Saville, 253 Ill. App. 3d 677, 682 (2<sup>nd</sup> Dist. 1993) (holding that it was inappropriate to foist the burden of research and argument onto the court)) a review of the documentation reveals that the applicant's request for an exemption number should be granted.

The taxpayer bears the burden of proving, by "clear and convincing" evidence, that an exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225, 231 (2<sup>nd</sup> Dist. 1991). Moreover, there is a presumption against exemption such that any doubts are to be resolved in favor of taxation (see Van's

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Meanwhile, the applicant stated, "documentation already on file, and to be introduced by either the State or ourselves, shows clearly that this is an exempt organization." Tr. pp. 3-5.

<sup>2</sup> The Department did not properly mark these documents in accord with 86 Illinois Admin. Code §200.155(c) and did not individually refer to any of these documents to explain their relevance when they were offered. Moreover, even after the applicant presented its case, the Department still did not refer to any of these documents in an attempt to explain why the applicant would not qualify for exemption.

Material Co. Inc. v. Department of Revenue, 131 Ill. 2d 196 (1989)). Nevertheless, even after resolving all ambiguities in favor of taxation, I conclude that the record contains clear and convincing evidence that the applicant qualifies for a sales tax exemption identification number as a “corporation, society, association, foundation or institution organized and operated exclusively for charitable \*\*\* purposes[.]” 35 ILCS 105/3-5(4); 35 ILCS 120/2-5(11).

The applicant’s amended articles of incorporation provide, *inter alia*, that the applicant was organized for charitable purposes. However, merely because an organization’s governing legal documents set forth that it is organized for charitable purposes does not relieve the organization of the burden of proving it actually operates as a charitable institution. See Methodist Old People's Home v. Korzen, 39 Ill.2d 149 (1968).

In Methodist Old People's Home, our supreme court set forth five factors to be considered in assessing whether an organization is actually an institution of public charity. According to Methodist Old People's Home, institutions of public charity: (1) have no capital stock or shareholders; (2) earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters; (3) dispense charity to all who need and apply for it; (4) do not provide gain or profit in a private sense to any person connected with it; and, (5) do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old People's Home, *supra* at 157. These factors are not rigid requirements, but rather guidelines to be considered with an overall focus on whether the institution serves the public interest and lessens the State’s burden. Du Page County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2<sup>nd</sup> Dist. 1995).

Applying the guidelines from Methodist Old People's Home, I find that the applicant has presented “clear and convincing” evidence that the applicant operates exclusively for charitable purposes. First, the applicant does not have provisions for stock or shareholders. Dept. Gr. Ex. No. 1, Doc. F, pp. 12-21.

Second, the fact that the applicant “derives its funds mainly from public and private charity” is established by evidence that 73% applicant’s income comes from public grants and private grants. App. Ex. No. 2, p. 5. Although the applicant does derive limited revenue from rental income such revenue is incidental and is not used for personal benefit but instead to support the applicant’s beneficent activities. App. Ex. No. 2.

Third, the applicant “dispenses charity to all who need and apply for it,” because the applicant’s services are generally offered to the public without charge. Dept. Gr. Ex. No. 1, Doc E, p. 17. Further, applicant’s activities do not “provide gain or profit in a private sense to any person connected with it.” The applicant’s Directors are not paid for their services. Although applicant does have some paid employees, the applicant’s highest paid employee earns less than \$40,000 per year. Tr. p. 13. Thus, applicant’s salaries do not appear to be so high that the employees could be considered the primary beneficiaries of applicant’s activities. See Lutheran General Health Care v. Department of Revenue, 231 Ill. App. 3d 652, 662 (1<sup>st</sup> Dist. 1992).

In addition, the applicant’s bylaws do not contain any provisions relating to membership fees. Dept. Gr. Ex. No. 1, Doc. F, p. 15-20. Moreover, the applicant’s services are open to the general public and not just members of the organization. Thus, the applicant “does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.”

It is true that the applicant does not provide any direct financial assistance to individuals. However, charity is more than just mere almsgiving. Rather, “charity is a gift to be applied \*\*\* for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare – or in some way reducing the burdens of government.” Methodist Old People's Home, *supra* at 156-157.

Here, the applicant’s evidence established that the applicant engages in two primary activities. First, it provides job training to decrease unemployment. Second, it offers after-school youth programs to help decrease youth crime. The applicant presented undisputed evidence that it: (1) offers these services to anyone who applies; (2) charges, at most, nominal fees for its services; (3) does not realize any profit or private gain from its services; and (4) derives its funding primarily from public and private donations. Such evidence constitutes clear and convincing evidence that the applicant is an institution of public charity.

WHEREFORE, for the reasons set forth above, I recommend that the Department’s tentative determination denying the applicant a sales tax identification number be reversed.

Date: 3/31/99

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Robert C. Rymek  
Administrative Law Judge